

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Progeny LMS, LLC)	RM-10403
)	
Petition for Rulemaking to Amend Part 90)	
of the Commission's Rules Governing the)	
Location and Monitoring Service)	

COMMENTS OF ITRON, INC.

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Itron, Inc. ("Itron"), by its attorneys and pursuant to Section 1.405 of the Commission's rules, hereby comments upon the above-captioned Petition for Rulemaking ("Petition") filed by Progeny LMS, LLC ("Progeny").

Less than a year after the Commission successfully auctioned over 200 Location and Monitoring Service ("LMS") licenses and only three years after Progeny and others successfully bid on roughly 280 other LMS licenses,¹ Progeny is seeking a radical overhaul of the LMS rules that would transform LMS into a general purpose wireless service. In particular, Progeny requests that the Commission:

- eliminate the LMS spectrum cap;
- eliminate the prohibition against interconnecting LMS stations with the public switched telephone network ("PSTN") in real time;
- eliminate the requirement that LMS stations be used for LMS purposes; and
- modify or eliminate the rule that provides a "safe harbor" for Part 15 stations and amateur stations seeking to avoid interference to multilateration LMS systems.

¹ See Petition at 4.

Itron takes no position concerning Progeny's proposal for the Commission to reexamine the LMS spectrum cap, but opposes the remainder of Progeny's proposals. The purpose of the LMS service requirements and the prohibition against LMS stations interconnecting with the PSTN in real time is to guard against interference to Part 15 stations.² Given the tens of millions of Part 15 devices that have been deployed, it is essential that these protections remain in place. Similarly, as the Commission found initially and reaffirmed twice on reconsideration, the "safe harbor" rule is necessary to give manufacturers of Part 15 devices the certainty they need to configure their systems and to promote competitive use of the 902-928 MHz band.

Progeny complains that the rules necessary to protect Part 15 users from interference are causing the company difficulty in financing its business. Progeny, however, has presented no justification for putting tens of millions of users of Part 15 devices at considerable risk in order to ease its burden of making a success of a business that it entered with full awareness of the applicable technical rules and the importance of those rules in protecting the public from harmful interference. Accordingly, insofar as the LMS service requirements, the PSTN interconnection limits, and the safe harbor standards are concerned, Progeny's Petition should be denied.

I. BACKGROUND AND STATEMENT OF INTEREST

Itron manufactures automatic meter reading ("AMR") systems.³ These systems use fixed and mobile wireless devices to enable a utility to monitor equipment such as business or residential meters from a remote

² These requirements also are intended to protect amateur radio stations.

³ Wireless meter-reading systems represent a significant advance over conventional methods for providing an interface between utilities and utility meters. They enhance dramatically utility productivity and efficiency, in some cases eliminating the need for time-consuming travel and, in others, making it possible for a meter reader to increase by a factor of ten, twenty, or more the number of meters that can be read in an eight-hour shift.

location. Traditionally, utility company employees had to travel to each device and record measurements manually. With wireless technologies, wireless sensor devices installed in each remote piece of equipment transmit measurements back to a mobile unit (such as a van), to the utility's central office or headquarters, or to an information processing center.

The 902-928 MHz band provides a critical link in Itron's AMR systems. The individual meter modules in these systems use the band to transmit utility consumption information to collection devices. The meter modules are certified pursuant to Part 15 of the Commission's rules.

Itron has shipped in excess of 20 million meter modules to more than 850 electric, gas, and water utilities, and collectively, Itron's customers have invested more than \$1 billion in these networks. Because of its extensive use of the 902-928 MHz band, Itron was an active participant in the LMS proceeding culminating in the rules that Progeny is seeking to change.

II. THE COMMISSION SHOULD RETAIN THE LMS SERVICE REQUIREMENTS AND THE PROHIBITION AGAINST INTERCONNECTING WITH THE PSTN IN REAL TIME.

The proponent of a Commission rulemaking bears the burden of demonstrating that the rule changes it is proposing are in the public interest. That is especially so when the Commission has addressed so recently and so thoroughly the issues that a petitioner is raising. The Commission is under no obligation to revisit matters that it already has considered.

These principles bear directly on Progeny's Petition. Not long ago, the Commission conducted a lengthy rulemaking concerning the LMS service. There was an extensive record created and the Commission carefully crafted rules to reconcile many competing interests in the 902-928 MHz band. The initial rules

were adopted in 1995.⁴ Following decisions on reconsideration in 1996 and 1997, the Commission adopted competitive bidding rules for the LMS service in 1998.⁵ The Commission has successfully auctioned nearly 500 LMS licenses, many of them less than one year ago.⁶ Given this background, Progeny bears a heavy burden.

Progeny claims that the Commission should reconsider its prior findings, notwithstanding the effort that went into developing them, because the Commission's regulatory philosophy has changed. According to Progeny, the LMS rules are a product of "political compromises,"⁷ and are out of step with the current regulatory philosophy of the Commission, which places an emphasis on flexible allocations and service rules.⁸ In support of this proposition, Progeny refers among other things to Section 303(y) of the Communications Act, 47 U.S.C. § 303(y), which gives the Commission the authority to make spectrum allocations in a flexible manner.⁹

Progeny has overlooked a critical fact. Although the Commission is striving for increased spectrum flexibility, it does not pursue flexibility at the expense of interference protection. Progeny cites to cases in which the Commission liberalized service rules to enhance flexibility, but in none of those cases did the Commission abandon its interference objectives. In fact, in the very statutory provision that Progeny relies upon, Congress has directed the

⁴ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695 (1995) ("First Report and Order").

⁵ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, 11 FCC Rcd 16905 (1996) ("Order on Reconsideration"); *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 13942 (1997) ("MO&O and Further NPRM"); *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182 (1998).

⁶ See Petition at 4.

⁷ Petition at 5, 22.

⁸ Petition at 6-15.

⁹ Petition at 14.

Commission not to allocate spectrum to provide “flexibility of use” if such flexibility would “result in harmful interference among users.”¹⁰

The Commission repeatedly has recognized that the need to protect against interference takes precedence over the policies favoring spectrum flexibility. For example, in recognition of the fact that wireless medical telemetry devices were increasingly at risk of receiving harmful interference from other services sharing the bands in which the medical telemetry devices were operating, the Commission made an allocation of frequencies dedicated to wireless medical telemetry transmissions.¹¹ Similarly, although the Commission made flexible allocations in the 1390-1392 MHz and 1430-1432 MHz bands to multiple services, including Little LEO feeder links, it conditioned the Little LEO allocation on the outcome of sharing studies, because of the possibility that Little LEO operations in these bands would cause harmful interference.¹² And the Commission prohibited the use of cellular architecture in the 700 MHz guard bands in order to provide interference protection to public safety systems.¹³ Progeny did not take into account the importance that the Commission attaches to preventing interference.

The principal purpose of two of the rules that Progeny seeks to eliminate is to reduce the potential for LMS stations to interfere with other operations, including Part 15 operations.¹⁴ These rules, which prohibit LMS stations from

¹⁰ 47 U.S.C. § 303(y).

¹¹ *Amendment of Parts 2 and 95 of the Commission’s Rules to Create a Wireless Medical Telemetry Service*, Report and Order, FCC 00-211 (June 12, 2000).

¹² *Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, Report and Order and Memorandum Opinion and Order, FCC 01-382 at 24-25 (Jan. 2, 2002).

¹³ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299, 5308 (2000).

¹⁴ *Id.* The Commission also instituted these requirements because it found that “creating ... a broad messaging and data service would be an inappropriate use of this [LMS] spectrum.” *Id.* at 4709.

interconnecting with the PSTN in real time and require that LMS stations be used for LMS purposes, are a cornerstone of the LMS service.

In adopting these rules, the Commission “recognize[d] the concerns of the Part 15 and amateur communities that the expansion of the permissible uses of the LMS service will result in more intensive use of the 902-928 MHz band.”¹⁵ It found that “[u]nfettered interconnection and messaging in the LMS could ... increase the potential for harmful interference to other users of the band,” and that “operational restrictions should be imposed to maintain the coexistence of the many varied users of the band.” Part 15 and amateur stations need protection against interference from LMS operations as much today as they did when the Commission adopted the LMS service rules, and Progeny’s desire for additional flexibility is an insufficient basis for overriding the Commission’s interference objectives.

Progeny suggests that, in lieu of the rules governing permissible communications and PSTN interconnection for LMS stations, the Commission use technical constraints, such as total power and duty cycle limits, to protect Part 15 and amateur radio users against interference.¹⁶ LMS licensees, however, already are expected to employ such measures to mitigate interference,¹⁷ in addition to observing the limits on permissible communications and interconnection. Eliminating the permissible communications and PSTN interconnection requirements, therefore, would reduce the level of protection that the Commission has determined to be necessary. Progeny, moreover, has not made specific proposals regarding total power and duty cycle limits for LMS stations, much less provided any technical analysis concerning the impact that

¹⁵ *First Report and Order*, 10 FCC Rcd at 4708.

¹⁶ *Petition* at 27-28.

¹⁷ *See First Report and Order*, 10 FCC Rcd at 4737 (multilateration systems must conduct field tests to demonstrate lack of interference to Part 15 systems, and to provide such protection, “may

such proposals would have on the potential for LMS stations to cause interference.

Finally, Progeny suggests that the Commission should modify or eliminate these interference protections because LMS licensees have been “unable to secure sufficient capital or to engage manufacturers to develop equipment for LMS networks.”¹⁸ There is no reason, however, to put tens of millions of users of Part 15 devices at considerable risk in order to ease Progeny’s burden of making a success of a business that it entered with full awareness of the applicable technical rules and the importance of those rules in protecting the public from harmful interference. The Commission should not abandon its interference principles in an effort to improve the ability of its licensees to raise capital or enter into arrangements with manufacturers. Separating winners from losers should be left to the marketplace.

III. THE COMMISSION SHOULD RETAIN THE SAFE HARBOR FOR PART 15 DEVICES.

Progeny also requests that the Commission modify or eliminate the “safe harbor” provision in the LMS rules.¹⁹ Part 15 devices satisfying the safe harbor standard will not be considered sources of harmful interference to multilateration LMS systems.²⁰ The Commission adopted this safe harbor to “promote cooperative use of the 902-928 MHz band” by “clearly establishing the parameters under which ... unlicensed users of Part 15 devices may operate

employ any one of a number of technical refinements, i.e., limiting duty cycle, pulse duration power, etc.”). *Accord, Order on Reconsideration*, 11 FCC Rcd at 16912.

¹⁸ Petition at iii. *See also* Petition at 15-16.

¹⁹ *See* Petition at 28.

²⁰ *See* 47 C.F.R. § 90.361.

without risk of being considered sources of harmful interference.”²¹ It reaffirmed the safe harbor in two decisions on reconsideration.²²

Progeny claims that the safe harbor “inappropriately shifted interference protection from more primary users ... to secondary users.”²³ The Commission, however, reached precisely the opposite conclusion in the LMS rulemaking, finding that the safe harbor specifications “appropriately balance the interests of all the parties in minimizing interference.”²⁴ Progeny’s unsupported claim affords no basis for revisiting this issue. If anything, there are more users dependent on Part 15 devices now than when the Commission first adopted and then reaffirmed the safe harbor provisions.

Progeny also asserts that the safe harbor may be contributing to its difficulty in raising capital.²⁵ For reasons that are discussed above, however, the Commission should not develop interference rules based on the success or failure of its licensees’ business plans. Accordingly, the Commission should not alter or repeal the safe harbor.

²¹ *First Report and Order*, 10 FCC Rcd at 4715.

²² *See Order on Reconsideration*, 11 FCC Rcd at 16914-16915; *MO&O and Further NPRM*, 12 FCC Rcd at 13956-13957.

²³ *Petition* at 28.

²⁴ *MO&O and Further NPRM*, 12 FCC Rcd at 13957.

²⁵ *Petition* at 28.

CONCLUSION

For the reasons stated herein, the portions of Progeny's Petition that Itron addresses in these comments should be denied.

Respectfully submitted,

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May 15, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Itron, Inc. was sent this 15th day of May, 2002, via first class mail, postage prepaid, to the following:

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/s/ Candace Gentry
Candace Gentry